

BOARD OF PESTICIDES CONTROL

November 5, 2004

Cumberland Room, First Floor Level, Augusta Civic Center
76 Community Drive, Augusta

AGENDA/MINUTES

9:30 A.M.

Chair Carol Eckert called the regular monthly meeting to order at 9:34 A.M. Other members in attendance included Bradstreet, Humphreys, Jemison, Simonds and Walton. Berry was unable to attend.

1. Introductions of Board and Staff

- ☒ The members and staff introduced themselves.

2. Minutes of the October 8, 2004 Board Meeting

Action Needed: Amend and/or Approve

- ☒ Simonds/Humphreys: Motion made and seconded to approve the minutes as distributed.

In Favor: Unanimous

3. Public Information Gathering Session Regarding Development of a New Proposal for Chapter 26 - Standards for Pesticide Applications and Notification for All Occupied Buildings Except K-12 Schools

At the September meeting, the Board recognized there had been considerable opposition to the initial June 30, 2004 proposed rule. The members voted to reject that version in favor of hosting a series of public information gathering sessions. The purpose will be to seek input from affected parties before the staff develops a new proposed rule. Health care providers, correctional officials and pest control applicators servicing these groups were invited to the October 8th meeting to discuss ways IPM and notice to long term occupants may be more effectively implemented. Persons involved with food preparation, processing or serving are invited to this meeting to share their ideas on these same subjects with the Board. Other groups will be invited to subsequent meetings.

- ☒ Eckert welcomed everyone to an informal public information gathering session. She reminded the group of the Board's goals to minimize reliance on pesticides and to provide disclosure about applications to long-term occupants of buildings. She noted the Board recognized there were problems with the original proposal. They included banning preventive treatments in food handling areas, addressing buildings open 24 hours a day, defining the term non-volatile, requiring 24-hour re-entry and dealing with occupants who have guardians. Representatives from the Maine Restaurant Association,

Maine Innkeepers Association, Maine Oil Dealers Association, Maine Grocers Association, Maine Tourism Association, Atlantic Exterminating Company and Modern Pest Services addressed the Board or responded to questions from the members. Some of the points raised during the hour and a quarter session included the following:

- Restaurant industry relies on the commercial applicator professionals, still does not understand what problems the Board is attempting to address and questions if the Board has historical application records. Also wants the Board to understand it is very rare for applicators to have to treat in the dining room areas.
- Many Maine restaurants are located in quaint old structures that were not professionally designed for serving food and excluding pests.
- Restaurant Association will support training for restaurant personnel and will make pitch to its membership for posting the symbol showing a facility has been treated with pesticides to control pests.
- Innkeepers support the points raised by the restaurant association and also want to be part of the solution.
- Oil dealers need clarification of how to protect employees of 24/7 convenience stores and exactly what equipment must be turned off during specific applications.
- Grocers also have dramatic differences in size and modernization of facilities.
- Nearly all groups expressed interest in receiving IPM training for their members.
- There is concern that if the regulation is deemed too restrictive it will result in “backroom applications” being made by unlicensed employees of a facility.
- Auto misters may result in direct exposures and although a few pest control companies sell them they can also be purchased directly by the facilities.

4. Enforcement Action Against David Wainwright of Canton

The staff will detail the results of their investigation into an initial complaint about a yellow liquid leaking from an agricultural sprayer. A large spill was found at the site where the sprayer had pulled off the road and a follow up inspection revealed that the sprayer belonged to Wainwright. It was also learned that in addition to treating his own crops Wainwright was being hired by other growers to treat their crops with products that included the restricted use herbicide atrazine. Wainwright did not possess either a private or commercial applicator license, had failed to maintain pesticide application records and had failed to either report or clean up a pesticide spill. Furthermore, he never responded to staff attempts to negotiate a consent agreement.

Presentation By: Henry S. Jennings
Chief of Compliance

Action Needed: Decision on appropriate enforcement response.

- ☒ Jennings explained that this case started out with the report of a pesticide spill and evolved into a lengthy investigation. In addition to the failure to clean up or report the spill, the staff determined that (1) a restricted use pesticide had been applied as part of a custom application, (2) the applicator did not possess a license, and (3) had failed to keep records. Jennings further reported that the applicator had not been cooperative during the investigation and had displayed a very low standard of care in his handling of pesticides. Since the applicator had failed to respond to a proposed consent agreement and was not present at this meeting, Jennings recommended the Board refer the case to the Office of the Attorney General. Simonds commented that the applicator seemed to have pursued a systematic circumvention of the rules, and Bradstreet observed that Wainwright had totally failed to cooperate with the Board's staff.

Simonds/Walton: Motion made and seconded to refer this case to the Office of the Attorney General.

In Favor: Unanimous

5. Consideration of Staff Negotiated Consent Agreement with Sterling Insect and Lawn Control of South Portland

On June 3, 1998, the Board amended its Enforcement Protocol to authorize staff to work with the Attorney General and negotiate consent agreements in advance in matters not involving substantial threats to the environment or public health. This procedure was designed for cases where there is no dispute of material facts or law, and the violator admits to the violation and acknowledges a willingness to pay a fine and resolve the matter. This case involved the commercial application of an herbicide to a property in Scarborough that was listed on the 2003 Pesticide Notification Registry. The company only provided notice to the registrant one hour in advance of the application which is a violation of the registry provisions in Chapter 28.

Presentation By: Henry S. Jennings
Chief of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff.

- ☒ Jennings pointed out that he had lowered the fine from the usual \$500.00 for a failure to notify a registrant to \$150.00 because the company had provided one hour of notice but not the minimum six hours as required by Chapter 28.

Bradstreet/Jemson: Motion made and seconded to approve the consent agreement negotiated by staff.

In Favor: Unanimous

6. Consideration of Staff Negotiated Consent Agreement with Mainely Grass, Inc. of York

This case is similar to the preceding agenda topic where there was no dispute of material facts and law, and the violator admitted to the violation and acknowledged a willingness to pay a fine and resolve the matter. It involved the mistaken applications of pesticides on two different dates to a property in York where the owner had not requested and did not wish to receive lawncare service. These actions constitute a violation of the Board's statute dealing with the use of pesticides in a careless, negligent or faulty manner.

Presentation By: Henry S. Jennings
Chief of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff.

- ☒ Jennings noted the staff had also sought a lower than usual penalty in this case because the unauthorized application resulted from the fact the street signs were very confusing and the applicator had spoken to a person at the site during the first application.

Simonds/Jemison: Motion made and seconded to approve the consent agreement negotiated by staff.

In Favor: Unanimous

7. Consideration of Staff Negotiated Consent Agreement with Fairmont Hardware of Bangor

This case is also similar to the preceding agenda topic where there was no dispute of material facts and law, and the violator admitted to the violation and acknowledged a willingness to pay a fine and resolve the matter. It involved a general use pesticide dealer who (1) failed to hold a license in five of the last six years and (2) who continued to sell a cancelled chlorpyrifos product after being issued a Stop Sale, Use, Removal Order by the Board. These actions constituted violations of the Board's statutes governing the distribution of pesticides.

Presentation By: Henry S. Jennings
Chief of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff.

- ☒ Jennings explained the staff had traditionally tried to work with the owner who was quite elderly and was also distracted by his wife's illness. However he had failed to license five out of six years and more importantly disregarded a Stop Sale, Use Removal Order.

Humphreys/Simonds: Motion made and seconded to approve the consent agreement negotiated by staff.

In Favor: Unanimous

8. Consideration of Staff Negotiated Consent Agreement with the Turf Doctor of Falmouth

This case is also similar to the preceding agenda topic where there was no dispute of material facts and law, and the violator admitted to the violation and acknowledged a willingness to pay a fine and resolve the matter. It involved failures to clean up spilled granular pesticides at the company's warehouse and to rinse liquid pesticide containers. These actions constituted violations of the Board's statutes and regulations requiring applicators to properly store pesticides and dispose of them according to label directions.

Presentation By: Henry S. Jennings
Chief of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff.

- ☒ Jennings reported that the most serious concern with this case was the company's failure to rinse the pesticide containers before placing them in a dumpster.

Jemson/Humphreys: Motion made and seconded to approve the consent agreement negotiated by staff.

In Favor: Unanimous

9. Other Old or New Business

a. Update on Pesticide Container Recycling - R. Batteese

- ☒ Batteese advised that a load of containers from Washington County had been hauled to Frenchville, another trailer was being loaded in Lewiston, and two more were anticipated from Detroit. He noted that ACRC would pay the shipping costs to Frenchville and also to have the baled containers sent to their closest shredder later in the year.

b. Update on 2004 Obsolete Pesticide Collection Program – R. Batteese

- ☒ Batteese reported that the collection had been conducted the week of October 18th. Sixty-six people had been served and over three tons of materials collected. He noted that if any funds remained, the contractor would pick up a large quantity of material at a farm that had recently gone out of business. Batteese also pointed out that due to reduced EPA funding it would be unlikely the program could be conducted in 2005. Eckert remarked that if any surcharges were to be placed on pesticide sales they should be used to support the Board's Obsolete Collection Program.

c. Other ???

- ☒ Batteese reminded the members of the rule-making initiative to make several housekeeping changes to five chapters, and noted copies of the entire rules with proposed revisions were in their meeting folders. Hicks also updated the Board by indicating that she had contacted the four companies marketing dyes and they had promised to send the environmental fate and aquatic toxicity summary information she was seeking.
- ☒ Eckert asked how the members wished to proceed on the proposed Chapter 26 regulation. There was agreement that one more information gathering session should be held at the next meeting to hear from child care and nursery school facilities, tenants groups, environmental or health organizations and state agencies. In response to a question, Randlett explained the need to have a fully representative group if the Board decided to proceed with consensus-based rule-making. There was further agreement that it would be difficult to get participation from people representing the general public. Batteese reported briefly on a meeting between staff, three structural pest control operators and two representatives from their national organization. He indicated they would be agreeable to establishing a notification registry for tenants and employees, and would promote IPM practices to their membership. They would also be interested in having the training manuals and exams upgraded to focus more on IPM. In addition, they would like to see the Board's rules changed to require licensing of employees making not-for-hire applications in commercial buildings.

10. Schedule and Location of Future Meetings

- a. The Board tentatively scheduled the next meeting for Friday, December 17, 2004.
- ☒ The Board scheduled the next meeting for Friday, December 17, 2004 in Augusta.
- b. Location and date for the following meeting.
- ☒ The Board tentatively scheduled the following meeting for January 14, 2005 with a snow date of January 21st.

11. Adjourn

- ☒ A motion to adjourn was accepted at 12:31P.M.

Robert I. Batteese, Jr.
Director